

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-849

July 10, 2003

MAINE PUBLIC UTILITIES COMMISSION
Inquiry Regarding the Entry of Verizon-Maine
Into The InterLATA Telephone Market Pursuant
To Section 271 of Telecommunication
Act of 1996

ORDER

I. SUMMARY

In this Order, we approve the proposed changes to the Verizon-Maine (Verizon) Performance Assurance Plan (PAP) filed by Verizon on February 19, 2003, with certain corrections and changes as outlined below.

II. BACKGROUND

The Verizon PAP has been in effect since May 1, 2002. Verizon and the Commission adopted it as part of the 271-approval process. The Maine PAP is based on the New York PAP, although there are some provisions that are unique to the Maine PAP, including the statistical methods.

The New York PAP undergoes periodic review and editing. The effort is led by a collaborative of industry representatives and New York Public Service Commission (NYPSC) Staff. As part of Verizon's effort to maintain a PAP that is as consistent as possible across all states that have adopted similar plans, after changes are approved and adopted in New York, the same changes are filed in the other states for Commission review.

On February 19, 2003, Verizon filed a revised PAP in Maine that was consistent with the NYPSC January 23, 2003 Order in Case 99-C-0949, amending the New York PAP, and Verizon's February 3, 2003 and February 11, 2003 filings in that proceeding. The February 19th filing also contained Maine-specific changes that Verizon described as "administrative and editorial." Verizon explained that the Company plans to implement the new PAP two calendar months following the MPUC approval of the proposed revisions. The February 19th filing was distributed to the service list of Docket No. 2000-849 and no comments were filed with the Commission.

An Examiner's Report describing Staff's review of the proposed PAP revisions was issued on June 24, 2003. Verizon-Maine and the CLEC Coalition filed exceptions on June 30, 2003. Their comments are discussed below.

III. REVIEW OF PROPOSED CHANGES

We have reviewed Verizon's filing and find that most of the changes are reasonable and, in fact, largely "administrative or editorial." We agree that these changes are necessary and useful. However, some of the proposed changes rise to the level of being substantive and require more consideration and review. We will discuss these issues in detail below.

There are two provisions in the PAP under which a penalty (or lack thereof) is determined based on the performance of Verizon over two or more months. First, in the aggregate reports, if Verizon's performance is calculated at a -1 level, the performance in the previous two months is considered. If Verizon scored a 0 in either month, no penalty is assessed. If Verizon scored a -1 or a -2 in either month, a penalty will be assessed. Verizon proposes the following change in Footnote 5 on page 10:

If there is no activity or insufficient sample for evaluation of a metric in either or both of the two previous months, the performance score from the previous month or scores from the previous 2 months will be used in that order to obtain two scores to determine the outcome of the -1 in the month under evaluation. If two scores cannot be obtained from the four months, the -1 in the month under evaluation will be changed to a 0.

In assessing Verizon's performance for an individual CLEC, a similar provision applies. Verizon has proposed the following parallel revision in Footnote 4 on page 3 of Appendix F:

For the individual rule, if a CLEC has a performance score of -1 or less in the current month where Verizon passes a measure at the aggregate level and there is no activity in the previous month to determine the CLEC's eligibility for payment under the individual rule, VZ will instead look back one additional month for a performance score of -1 or less for the eligibility determination. If there is not activity in either of the two previous months, the individual rule will not be triggered.

These changes go beyond being merely administrative or editorial because these provisions could impact penalty amounts. It is especially significant given current CLEC activity levels in Maine during the past 12 months, as there are likely to be months with no activity and therefore these provisions are likely to be triggered. Because these changes take into account the level of market activity in Maine, we agree that they should be adopted.

A second area that requires discussion and consideration is the new language on page 19 related to a statute of limitations for corrections and challenges to data reported

by the PAP. Verizon proposes to include the following language in Footnote 18:

A two-year statute of limitation on challenges to PAP performance will be adopted and effective July 28, 2003 for the June 2003 performance report. The initiation of this provision is contingent upon Verizon ME providing the algorithms, in a structured format, related to the PAP metrics to the Commission Staff prior to July 28, 2003. Verizon ME will provide notice to CLECs receiving PAP reports that it has satisfied this obligation.

Information provided by Verizon in an email dated May 13, 2003, in response to Staff questions about this new footnote, indicated that Verizon-NY requested language in the New York PAP that would have instituted a six-month statute of limitations. The justification for this change was the claim by Verizon that the PAP is an incentive plan, not a penalty plan, and as more time goes by it becomes more difficult to analyze the data. CLECs in New York argued that such a provision would incent Verizon to manipulate or delay data. The NYPSC decided that two years was a reasonable compromise and added the provision that Verizon provide the calculation algorithms to the Commission¹. We believe this compromise is reasonable and allow the provision to go into effect in Maine as well. Given the date of this Order, the Maine PAP should include a statute of limitations that is effective August 28, 2003 for July 2003 data.

Another change that requires more than cursory consideration is the change from 10 days to 15 business days that is proposed on page 27 in the following sentence:

Changes to the New York Plan adopted by the New York PSC will be filed with the Maine Commission within 15 business days of the compliance filings in New York for review and inclusion in the Maine Plan upon the Commission's approval.

Although this is only a change of one business week, it requires discussion because when Verizon first proposed the PAP it contained a provision for 30 days. During the 271-approved process, Staff requested a 10-day window to match the language in the Massachusetts PAP. In response to Staff's inquiry regarding the basis for increasing the interval at this time from 10 to 15 days, Verizon responded in an email on May 13, 2003 that:

¹ It its exceptions, Verizon clarified that the commitment to provide algorithms by July 28, 2003, applied only to the New York PAP metrics that are common to the Maine PAP. The Maine-specific PAP metrics will require additional time. Upon inquiry by Staff, Verizon indicated that the earliest date the Maine specific algorithms that are based on the PAP changes approved by this Order could be available is November 15, 2003.

Verizon Maine would like to avoid the need to file multiple changes with the Maine Commission. Generally, things are solidified within 1 to 3 weeks, which is why we [Verizon] proposed filing the changes within 15 business days of the compliance filings in New York.

In the previous year, there have been relatively few PAP revision filings made by Verizon Maine, and there have been no cases in which Verizon Maine has had to make multiple, corrected filings. At this time we are not persuaded that a change to the number of days is necessary. If, in the future, PAP filings (in particular, corrected PAP filings) become more frequent, we will consider changing the timeline. Until then, we will retain the 10-business day interval in the Maine PAP. In its exceptions, Verizon pointed out that in addition to requesting a change from 10 days to 15 days, the proposed, revised language also clarifies that it is "business" days and that the day on which the counting begins is the day of the filing in New York of NYPSC-approved PAP revisions. We agree that those are useful clarifications.

The Hearing Examiner sought the input from Maine CLECs on two additional PAP revisions, especially those CLECs that may be affected by them. First, throughout the proposed PAP document, the metrics for UNEs are now divided into two categories: UNE-loop and UNE-platform (and the penalty amounts are correspondingly redistributed). Given the changing competitive marketplace, this change appeared reasonable, and if Verizon's performance in one area is consistently better or worse than others, the Commission would have an interest in the PAP highlighting that difference. Second, in the proposed PAP, the EDI (Electronic Data Interchange) measures and references have been removed. At the time the original PAP was adopted, Verizon represented to the Commission that the number of orders received from Maine CLECs via EDI was very low. We assume that the number has remained low or even decreased and therefore the change would not only be reasonable, but maybe favorable to CLECs because it would redistribute potential penalty money to metrics that would be more likely to measure CLEC activity. The CLEC Coalition concurred with our assessment of both proposed changes in its comments. Therefore, we will allow these changes in the PAP to go into effect.

IV. OTHER ISSUES

On February 10, 2003, the Hearing Examiner issued a Procedural Order that stated that Verizon Maine filed a letter dated December 6, 2002, in this docket that outlined a proposed process for all Carrier-to-Carrier (C2C) changes that affect the PAP. In her Order, the Hearing Examiner stated:

Staff has reviewed this process and finds it reasonable. Any party that has an objection to the procedure outlined in the letter should file a letter with the Commission by February 18, 2003. If no comments are submitted, the process will be adopted. If it is adopted we will consider the December 6

letter Appendix J to the PAP and Appendix T to the C2C Guidelines.

At that time we did not received any comments. However, in its June 30, 2003, Exceptions, Verizon stated:

Verizon had indicated to Staff ... that a description of this new administrative process could be placed in the appendices for the C2C plan and the PAP. However, since that communication Verizon has considered that the appendices to the Plans would be better reserved for changes that apply to multiple states across the footprint. Thus, Verizon now proposes that the language from the December 6th letter on C2C changes be placed within the body of the C2C and the PAP plans, not in the appendices. Specifically, Verizon proposes to place the language in the introduction section of the C2C plan, and then create a Section III in the PAP to contain the proposed language.

Because this is not a change in the language or meaning, merely the location in the two documents, we will allow the proposed modification and order Verizon to make the change described in the December 6, 2002 Procedural Order in those sections in the body of the documents.

Verizon also requested a delay in making the change. The Company explained in its Exceptions that:

Verizon is expecting further C2C revisions from the New York PSC sometime in July. Rather than filing C2C changes in Maine twice (*i.e.*, once to include this new language and a later revision to include changes expected in July from the NYPSC), Verizon Maine seeks approval to make a single filing of revised C2C provisions subsequent to the release of the New York approval of C2C changes (expected in July), that would then include both the New York-approved changes, as well as the new Maine language on processing further C2C changes.

Given the date of this Order, we agree that it is reasonable to make both changes in the same document.

Finally, when Verizon filed its proposed PAP revisions on February 19, 2003, it submitted a redlined version of the current PAP. The redlined changes were made to a May 2002 PAP filing. However, in June 2002, Verizon filed an updated Maine PAP at the PUC. Upon bringing this to Verizon's attention, it was confirmed that Verizon did use the June 2002 PAP to make the redlined changes but the incorrect May date was

inadvertently used. When Verizon makes its compliance filing it should include a corrected June 2002 redlined version of the changes made by this order and verify that there are no other changes or corrections related to this oversight.

V. CONCLUSION

We approve the proposed changes to the Verizon Performance Assurance Plan filed by Verizon on February 19, 2003 with the corrections and changes discussed above.

Accordingly, we

ORDER

1. That the implementation schedule for the revised PAP will be as outlined in Verizon's June 30, 2003 Exceptions; and
2. That Verizon will include the December 6, 2002 letter that is attached to this Order as Section III in the PAP and in the Introduction section of the Carrier-to-Carrier Guidelines along with the expected July NYPSC C2C changes; and
3. That Verizon should make a corrected redlined filing and verify that the correct redlined version has been filed; and
4. That Verizon will provide the algorithms, in a structural format, for PAP metrics that Maine has in common with New York by July 28, 2003 and the Maine specific PAP metrics by November 14, 2003.

Dated at Augusta, Maine, this 10th day of July, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond

COMMISSIONER ABSENT: Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.